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Child support and the Government's children's socio-economic rights obligations

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Abstract

This article argues that the recovery of child support is a vital aspect of ensuring children's socio-economic rights. The UK Government has a legal responsibility to assist parents to meet the needs of their children whether by providing specialist support or through welfare payments. The Government cannot fulfil this responsibility by requiring parents to reach private agreements and failing to provide suitable additional support. The current law and policy focus purely on the duty to maintain. It is assumed that each parent has the responsibility to provide for their children, and there is no back up support under the Child Support Act where the parents are unable to do this. This fails to acknowledge and resolve wider social issues which are crucial to ensuring that child support is received, and children are not living in unnecessary poverty. The article argues that by taking this approach the Government is failing to fulfil its responsibility to protect children's socio-economic rights. This article sets out a socio-economic rights framework for amending child support legislation and policy, highlighting the bare minimum Government obligations.

1. Introduction

The law and policy under the Child Support Act 1991 (CSA) places responsibility to pay child support with the child's parents through the concept of duty to maintain. Successive governments have developed child support law and policy in a haphazard way, and its many failings are well documented (see for example Abbott 1996, Millar 1996, Davis et al 1998, Wikeley, 2007, Bryson et al 2013, DWP, 2016, and Gingerbread, 2019). Unfortunately, many children do not receive child support, and some children receive very little money or irregular payments. The current law and policy treats child support as an independent issue without clear consideration of family structures and problems. The framing of child support as a matter of individual responsibility, that is currently isolated from the context of social assistance and

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family structures has allowed the Government to avoid its responsibility to protect the socio-economic rights of children. This framing also results in a failure to meaningfully utilise child support to address poverty and other social justice issues.

This article argues that the current framing of child support on the principle of the duty to maintain is too narrow. The Government needs to look beyond this and search for a more comprehensive framework, which looks beyond parental responsibility. Child support should be about providing for children, as suggested by New Labour (Henshaw, 2006), and the Government needs to do more to make sure the policy is workable and children are provided for. Unfortunately the CSA was not adapted to reflect the philosophy in the Henshaw Report, and instead the Act and its formulas remained firmly focussed on the duty to maintain. Overtime Governments have pushed child support further into the private sphere, and there is limited support through the benefits system where the non-resident parent (NRP) is unable to pay, or doesn't pay. This is problematic because children of single parents are at greater risk of poverty than other children, and these parents are normally women.

The child support law and policy needs to be revised to help resolve these wider issues. Previously Altman has posited a number of theories for child support, but all these theories place responsibility with either the child's parents or the Government (2003). He ultimately opts for a theory that places responsibility with the parents on the basis of remedying a parental wrong and to prevent harm to the child. This is problematic for a number of reasons,¹ but primarily because it leaves a gap for many children as there is only so much parents can do. It is also incorrect to place the focus solely on Governments. Instead both parents and the Government should be responsible for providing for children. This dual-responsibility can be best articulated through children's socio-economic rights. This article argues that child support is a vital aspect of protecting children's socio-economic rights, in order to better provide for the needs of children. The article argues for a new conceptual framework for child support, which highlights what the Government's minimum obligations should be under this new framework, and demonstrates that the Government needs to take this approach in order to comply with its existing children's socio-economic rights obligations. This article will now consider the Government policy on child support, before outlining the Government's responsibilities in relation to child support under the United Nations Convention on the Rights of the Child (UNCRC). Importantly the article will then propose a new framework that

¹ For a further critique see for example Wikeley, 2006.

complies with children's socio-economic rights and considers the minimum duties of parents and Governments under this model.

2. Government Policy: child support, benefits and the wider family law context

Family law has traditionally been about enabling fair outcomes, promoting social justice and ensuring the welfare of family members (Mant and Wallbank, 2017). The original goal of promoting social justice and welfare was to minimise inequality (Mant, 2017), which was in line with the aims of the welfare state (MacGregor, 1999, 91; Kaganas, 2017, 171). However, this does not sit well with Thatcherite and later Conservative policies, as well as austerity measures. Current family law focuses on the “autonomy and responsibility” of the individual, placing family law into the private sphere. Self-reliance and independence have become dominant themes in social policy (Herring, 2014), and allowing individuals to manage their own affairs is held up by the Government as a win-win (Mant, 2017). This is because it promotes “autonomy” and saves money. Diduck argues that the use of the word autonomy is politically attractive because it implies choice and respect (2016, 96). However, this concept of self-reliance has previously been heavily criticised in relation to the welfare state (Goodin, 1985). This is because the aims of the welfare state are social cohesion and collective responsibility, whereas individual responsibility provides for the opposite (MacGregor, 1999, 91). This individualised approach has been apparent across family law as a whole since the introduction of LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012), which largely saw the removal of legal aid from family law. Post LASPO dealing with family matters privately is deemed to be the responsible approach, to the extent that an attempt for ‘access to a legal and public service is recast as irresponsible’ (Diduck, 2016, 104). However, it is arguable that this dominant approach of individual autonomy, responsibility and saving public expenditure in child support policy under the CSA predates LASPO.

The CSA 1991 was introduced under Thatcher's Conservative Government. Although some of the original aims were commendable, and included social and moral claims such as lifting more single mothers and their children out of poverty (White Paper Vol I), this aim was derailed by the Treasury's wish to cut public expenditure (King and Crewe, 2014). The resulting policy and law meant that all single parents on benefit had to direct their child support claim through the child support agency, and all the money collected then went back to the treasury to replace the benefits that had already been paid. Therefore the original policy did absolutely nothing to

reduce child poverty, because the benefits themselves were not high enough to provide for these children. Children did not receive any additional funds through the scheme, instead public transfers were substituted for private transfers (Wikeley, 2006, 122), and paying parents (who may also be living below the poverty line) had to give a percentage of the money they did have back to the Government. There was no room for autonomy for parents on benefits, because they were forced to use the agency so that the Government could control payments and use these payments to reduce public expenditure. Therefore, although the White Paper was initially entitled *Children Come First*, it has been stated that it should have been entitled *the Treasury Comes First* (HC Deb, 1990). Parents not claiming benefits were free to choose whether to use the agency or to reach their own private agreements and make autonomous decisions. This effectively established a “two-tier” system in the UK (Wikeley, 2006, 496) and this view of the CSA is still prevalent today.

The aim of reducing public expenditure was seen throughout Thatcherite policy, and this left a demolished social infrastructure, fragmentation, inequality and poverty (MacGregor, 1999, 93). The policies diminished many aspects of the welfare state including the premise of social citizenship and social cohesion brought about by the Beveridge Report (1942).² While post-war benefit levels may never have been regarded as generous, the gap between benefit levels and average earnings increasingly widened during Thatcher’s rule, as a result of cutbacks in some areas of social security provision (Harris, 2000, 27). Research has demonstrated a disparity between income support rates and the funds needed to purchase the items that many regard as necessities, and are therefore needed to provide a suitable standard of living (Harris, 2000, 26, and see section 3 below). In sum poverty rose rapidly across the UK during Thatcherism (Kakabadse et al, 2012; Shaw, 2007; Van der Putten 2005; ComRC, 1995).

New Labour then attempted to reframe child support policy and made a link between child support and the child poverty objective (Henshaw, 2006; Wikeley, 2006, 140). However, although there were key changes to the Act, and the wider social welfare provisions, there was still ‘very little discussion of the fundamental principles which should underpin the child support regime’ (Wikeley, 2006, 139). The Green Paper only allocated one page to the discussion of these principles, but this page did include a reference to the right of children to care and support from their parents (DSS, 1998; Wikeley, 2006, 139). The policy (outlined in

² This does not include the NHS which was a key element of the Beveridge Report which remains today.

the Henshaw report) placed primary responsibility with the parents,³ but also recognised that the State had a role in alleviating child poverty and should provide back up where necessary. Therefore, this policy did have resonance with children's rights and the approach of the UNCRC (discussed below at s 3.3). The child support policy set to achieve this by allowing parents to retain all the child support paid, on top of any benefits they were entitled to (Miles, 2011). However, the CSA still referred to the duty to maintain, and there were no further underpinning objectives, such as a right to the child support, mentioned in the Child Maintenance and other Payments Bill 2007 or the updated Act (Wikeley, 2007). The updated child support formula (discussed at section 3.3.2), also worked on this premise focussing on the income and expenditure of the NRP rather than the needs of the child.

The other element of Labour's approach was the start of the push for autonomy through the language of responsibilities. Parents were to try and reach their own private agreements on child support and only use the agency where necessary (Henshaw, 2006). There was a clear policy shift towards encouraging private agreements, with the emphasis being on private ordering (Wikeley, 2007). The Government attempted to do this by trying to influence individual behaviour, rather than providing a state service (Taylor-Gooby, 2010). Unfortunately, without adequate advice and support services there is a risk of reinforcing power imbalances between parents (Wikeley, 2007). This change meant also meant that single parents on benefit no longer had to use the agency, and all parents could decide to have a private agreement. The change had the potential to dramatically reduce the case load of the Agency, which was struggling to operate efficiently, however, this did not happen (Wikeley, 2007). The new framework had a clear commitment to private ordering, but the revised CSA still failed to provide specific foundations on the purpose of child support, despite the initial rhetoric, and the only basis remained the duty to maintain.

The Henshaw Report also linked child support to Labour's wider poverty targets, and their view that the welfare system should tackle child poverty and social exclusion. The link between child support and poverty targets was a positive step, and these poverty targets were eventually encompassed in the Child Poverty Act 2010. More broadly Labour continued to promote a philosophy of economic self-reliance and focussed on employment as a way out of poverty (DSS, 1998, 3805). However, this philosophy came with substantial benefits to support families, particularly single parents (Dickens, 2011, 9). Those who had access to these benefits

³ For further information on parental responsibility, or obligation, in this context and expectations in that regard see for example Ellman et al (2014), Eekelar (1991), Wikeley (2006) and Douglas (2016).

tended to earn more income from benefits than from their private income. Therefore, the return to employment was heavily supported by benefits and was a carrot rather than stick approach (Dickens, 2011, 9). Both absolute and relative poverty rates fell under the Labour Government, and they fell by a higher rate for children in single parent households (Dickens, 2011, 11-16). In terms of poverty targets Labour opted for relative poverty targets, rather than absolute poverty targets. Relative poverty targets can be harder to meet than absolute poverty targets, particularly when median income is rising. This is because they are not just about changing the real incomes of poor children, but changing their incomes in line with wider changes in median income and therefore measuring the distribution of income between different households (Dickens, 2011; Harris, 2000). Harris argues that the consideration of relative poverty targets is arguably more consistent with the aims of the UNCRC, than seeking to apply an absolute standard alone (2000, 15-16). Under the Labour Government absolute poverty fell by a greater degree than relative poverty, due to increases in median income over the period. Although the relative poverty targets were not met, there was still a vast decrease in relative poverty and the increased benefit payments to single parents reduced the relative poverty rate among these households by 16.8 percentage points (Dickens, 2011, 16). However, by 2009 a third of children in the UK were still living below the poverty line (Kakabadse et al, 2014, 87), so despite these important improvements in policy it was arguable that children's rights were still not met (Children's Rights Alliance for England, 2009).

Since then there have been negative changes in the context of child support and child poverty introduced by the Coalition Government, followed by the Conservatives. There is a huge emphasis on reaching private agreements, which Douglas argues has rendered child support as a matter of personal preference rather than a legal obligation (2016, 12). Fees were introduced for using the child maintenance service to help with the collection of maintenance in August 2014. This sees a further move towards individual responsibility and autonomy, regardless of the circumstances of the child and the parents. The Government is trying even harder to push family law into the private sphere by introducing financial consequences for those who want help from the publicly funded agency. Assistance with the recovery of child support is now portrayed as a service (Diduck, 2013), which lone parents must pay for.

These Governments have also made a number of changes to social security policy which reduce the payment of benefits. The level of poverty in the UK indicates that the benefits available are below assessed need (Alston, 2018) and are insufficient to support single parents (Browne, 2016 and see section 3.2 below). Deeming and Smyth highlight that the UK has one of the

lowest unemployment benefit replacement rates in OECD countries, with lone parent families with two children only receiving 40% of what they would receive in employment (2015). These reductions have increased through policies such as the benefit cap and the two-child policy.⁴ Lady Hale has stated that the benefit cap breaks the link between benefit and need and those affected will not receive the sums of money necessary to adequately house, feed and clothe themselves and their children (*R.SG and Others v Secretary of State for Work and Pensions* [2015] UKSC 16 [180]). Although it is clear that benefits are limited and insufficient to support needs, studies have shown that additional income from child support can make a vast difference to lone parents and their children. These studies have shown that when child support is actually paid on a regular basis then this can help to lift children out of poverty (Cuesta and Meyer, 2014; Skinner et al, 2012; Hakovirta 2012; Cuesta et al, 2018; Bryson et al, 2013). The DWP found that in some cases direct pay child support received represents a substantial proportion of annual household income (2016, 104). However, child support can only make a difference in cases where the obligation is enforced.

The Conservatives have also removed the poverty targets introduced under the Child Poverty Act (Stewart and Roberts, 2018), and decoupled child support and poverty objectives. The new Welfare Reform and Work Act 2016 is framed around life chances and social mobility. The new policy focusses on “worklessness” (DWP, 2017), forcing people to choose work in line with the approach taken in regard to social security measures. Individuals do have more access to funds if they can work for 16 hours a week, because this alters the way in which the benefit cap applies, so they can retain benefits and supplement this with private income, but this is not always practical (*R (on the application of DA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent) R (on the application of DS and others) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2019] UKSC 21(DA and DS)). The use of ‘life chances’ means that the Act is now framed around some wider qualitative measures, but it has removed quantitative measures to measure poverty rates. The Social Mobility and Child Poverty Commission argue that the lack of measures to assess child poverty progress is unacceptable, because a strategy that cannot be measured is meaningless (2014). It allows the Government to ignore the impact of welfare cuts, because they no longer have a clear poverty measure to be held to account by. It is important to have a number of poverty measures, as poverty contains many facets (Waggle, 2002; 2018; Redmond, 2008), however, economic

⁴ Prior to this the coalition Government placed a three year freeze on child benefits, tightened housing benefits entitlements and eligibility for child tax credits, in addition to introducing a number of other austerity measures (Kakabadse et al, 2014, 86).

measures remain significant and need to be retained if there is to be further progress in reducing child poverty (Calder, 2018; Dickens, 2011; Kakabadse et al, 2014). Since 2010 there has been an increased privatisation of child support, the decoupling of child support from poverty, and the removal of child poverty assessment measures. The next section of this article will demonstrate that these changes taken as a whole mean that the government is not fulfilling its existing obligation to protect children's socio-economic rights.

3. Socio – economic rights and the UNCRC in the UK

3.1 Introduction

Children's socio-economic rights, which are protected under the UNCRC, provide a legal mechanism which require that the needs of children and families are met. These rights relate to factors like adequate food, shelter, clean water, formal education and access to primary health care (Nolan, 2014), some of which the benefits system fails to uphold (Hale, SG [2015]). Fundamentally their '*raison d'être* is to uphold human dignity' (Van Bueren, 1999). These rights underpin factors that are necessary for the development of the child and the protection of the child's best interests. Under the UNCRC, it is primarily the responsibility of the parents to fulfil these needs. However, in some cases there might be multiple interacting factors that need to be resolved, which extend beyond parental ability (Belsky, 1993). This is where the Government is supposed to step-up and provide assistance, but there is no provision for financial assistance under the current child support framework, which only refers to the duty of the parents. The Government is failing to uphold its responsibilities in this area, through the privatisation of child support, and numerous benefit cuts in order to reduce public expenditure (see section 3.2-3.3 below for more detail).

The UK has ratified the UNCRC, but not implemented it. The legislature is bound by the Convention and is obliged to give effect to the socio-economic rights obligations under the UNCRC (Heymann et al, 2015; Nolan 2014), but the UNCRC is not directly applicable in court. It does, however, provide a source of interpretation in the context of the European Convention on Human Rights (ECHR), (see below at section 3.4). This is particularly important in the context of Articles 8 and 14 ECHR and has also been discussed in the context of A1P1 during the benefit cap cases (*SG; DA and DS* [187]). Governments can comply with the instruments they have ratified through legislation, policies and budgets (Heymann et al, 2015; McCall-Smith, 2019), and the UK Government is legally bound to respect the rights set out in the Convention, and to take all appropriate legislative, administrative and other measures

to ensure the rights are realised (Arts 2 and 4). The legislature has committed to giving the UNCRC due consideration when making policy and legislation. The Cabinet Office guidance encourages impact assessments to be undertaken on legislative changes to ensure children's rights are considered (The Government, 2016). Further, '[a]ll law and policy development, administrative and judicial decision-making and service provision that affect children must take account of the best interests principle.' (ComRC, 2006 [13]). Lord Kerr has described this as a duty 'to keep faith with the spirit of the Convention' (*DA and DS* [2019]).

In order to effectively protect children's socio-economic rights the Government is required to take a combination of both positive and negative action, and provide varying levels of resources (see for example Goodin, 1986; Waldron, 1984; Landau, 2012). This positive action includes a duty to provide appropriately funded services to ensure children's socio-economic rights are protected (McCall-Smith, 2019; Vadenhole, 2014). Maximum available resources should be allocated so these services are properly funded (Elson, 2012; Vandenhole, 2014; ComRC, 2003; 2016a), and these services must help families protect children's rights and create an environment where children can grow and reach their potential. Currently the Government is taking minimal action, reducing its responsibility by pushing child support into the private sphere. It is also failing to provide resources by charging for the services which are available.

This article will now look at the provisions under the UNCRC which are most relevant in the context of child support. It will start by considering the role of the cross-cutting principle of the best interests of the child under Article 3 UNCRC (ComRC; Hanson and Lundy, 2017) in the context of child support.⁵ It will then consider Article 27, which recognises that a child has a right to an adequate standard of living and is the key article in regard to child support, before considering the role of the judiciary in this context.

⁵ This article will not consider the important cross-cutting concept of the views of the child in Article 12 UNCRC in any detail. This is because Article 12 requires that children are heard in judicial and administrative proceedings, and there are rarely any 'proceedings' in child support cases under the CSA. The new framework adopted by this article is still based on a formula, so legal proceedings in individual cases will remain rare because the agency simply applies the formula which provides a maintenance obligation under the CSA. There are proceedings in relation to more complicated enforcement mechanisms, and in those situations authorities would have to consider whether it was appropriate to hear the child in accordance with Article 12 UNCRC. However, the agency can proceed automatically with standard enforcement mechanisms, in which case there would be no proceedings (see footnote 18 for further details on enforcement mechanisms). When the Government is revising its child support policy in accordance with the children's rights framework, it should consult children generally as part of this process to comply with the wider purpose of Article 12, particularly in relation to the development of material assistance and support programmes which should be provided under Article 27. Children should be included in the social process of developing community and society and 'State parties should carefully listen to children's views wherever their perspective can enhance the quality of solutions.' (ComRC, 2009, para 27).

3.2 The best interests of the child

Article 3 of the UNCRC requires that the best interests of the child is a primary consideration in all actions concerning children. Under the Convention the requirement to take the best interests of the child into account falls on legislative bodies, administrative authorities, courts and social welfare institutions. The standard that the principle should be observed by a range of bodies is designed to make the principle more effective, so that it is always a consideration in actions concerning children. In many cases, however, there can be competing considerations which is why the best interests is a primary consideration and not the paramount consideration. Nevertheless, it is clear that the best interest principle should be key consideration which Article 3(2) recognises is an important aspect of child wellbeing. This cannot be appropriately addressed by pushing child support into the private sphere.

The best interests of the child can only be supported through protecting family well-being, and this includes shielding children from the negative effects of poverty. Growing up in poverty can affect the development of the child in a number of ways (O'Brien, 2018). For example it can have negative effects in relation to both physical and mental health (Cooper and Stewart 2017; Ayre 2016). It can hinder achievement in education (Cardiff Council, 2013; National Education Union and CPAG, 2018; NEU Survey 2019), and go on to affect long-term outcomes (Griggs and Walker, 2008; Nolan, 2014) which would include access to work. This conflicts with Government policy goals which are hinged on independence through entry into the workforce, because the negative effects of poverty on young children can impair their ability to work in later life. Violations of basic socio-economic rights, such as access to suitable shelter, food or heating, that arise as a result of poverty inflicted by a reduction in benefits (*SG* [180]; *DA and DS* [33] and [37]), will have a more significant and protracted effect on children compared to adults (Nolan, 2014,15-16; *DA and DS* [34]) . The Committee on the Rights of the Child considers that early childhood is a particular crucial time when babies and infants are especially vulnerable to poverty, family breakdown and multiple other issues that violate their rights and undermine their well-being (2006). This is of particular concern in the context of family breakdown because in most countries lone parent families are at the greatest risk of poverty (Barcena-Martin et al, 2018; Bradshaw et al, 2018; Gornick and Jäntti, 2012).

The Institute of Fiscal Studies found that recent increases in absolute child poverty rates in the UK are much higher in lone-parent families than in couple families (Browne, 2016). In

2017/18, 43% of lone parents were living in poverty, which is almost twice as high as any other family type (Joseph Rowntree Foundation, 2020, 20). This coincides with the finding that parents claiming child support under the CSA comprise a relatively low-income group compared to the general UK population, with 46% reporting an income of less than £15,600 a year (DWP, 2016, 25). Some of these lone-parents are now further negatively impacted by the two child policy (Sefton et al, 2019), and the benefit cap (*DA and DS* [22]). Lone parents are also more likely to be from an ethnic minority or have a disability in comparison to the general population (Gingerbread, 2018, 4). This level of poverty is unnecessary in the UK economy, which is still relatively wealthy, and it stems from increasing inequality in wealth distribution. This is the result of the focus on autonomy and individual responsibility, austerity and the reduction of social welfare. These policies do not support the best interests of the child and family wellbeing.

It is clear that lone parents, and their children, are more likely to live in poverty and suffer more under the austerity cuts. In the cases of *SG* and *DA and DS* the UK Supreme Court considered lone parent could be an example of status under Article 14 of the ECHR. The children of the parents were also encompassed within this status as family members of the lone parents taking into account Article 8 and Article 14 ECHR. Ultimately the claims failed, but this finding highlights that the disproportionate suffering of lone parent families can be viewed as a form of structural discrimination. Children covered by child support legislation will often be children of lone parents, although not all will be where the parent with care has a new partner. The recognition of children of lone parents as a special group, who need additional protection, highlights further why the Government needs to develop a policy which complies with its children's socio-economic rights obligations. A good and effective child support policy can promote family well-being, through the reduction of poverty. Family and relational well-being is directly correlated with children's socio-economic status, therefore a properly functioning child support system is essential for protecting the best interests of children for this particular group in society. If the Government does not build an appropriate child support system, which recognises its own responsibility to take measures, then it is failing to protect children's socio-economic rights.

3.3 Child Support and the UNCRC

3.3.1 Requirements under Article 27

Article 27 of the UNCRC is the provision that expressly deals with child support and the child's living standards. The key feature of this provision is that it places responsibility for securing this standard of living with both the parents and the State. Article 27(1) recognises the right of every child to an adequate standard of living, which would include access to basic necessities such as food, clothing and heating. This goes beyond basic minimal needs (Redmond, 2008) and the provision creates no ceiling with the aspiration to continue to improve living standards. Without an adequate standard of living the principle of the best interests of the child cannot be fulfilled. The responsibility for securing this standard of living, to ensure the child's development, lies predominantly with the parents (Art 27(2)). Where parents have adequate resources, states are free to impose higher levels of child support because there is no ceiling to Article 27(1), and the main aim is to fulfil children's rights and improve their life chances. Article 27(3) requires that Contracting States take measures to assist parents in cases of need, and this has been recognised by the Supreme Court in *DA and DS* (per Lord Kerr [180]). The support envisaged requires States to take measures to assist parents in fulfilling their responsibilities to their child. This would include assisting parents in providing appropriate living conditions for their children (ComRC, 2006 [20]). This may result in the State having to provide financial support in place of, or in addition to child support, through a guaranteed maintenance scheme. In other cases it may be about providing services to support family well-being. Therefore, although it is the child that must have their socio-economic rights protected, where parents are unable to do this Article 27(3) requires the State to support parents rather than the child directly. A potential weakness of this provision is that it is aspirational, vague and the lack of a ceiling means it can unclear when the provision has been fully met (Harris, 2000; Fortin, 1998). However, it is clear that the basic right to an adequate standard of living must be fulfilled. The Government has a duty to make sure the child's basic needs are covered, and where a child is living in poverty it is arguable that this requirement has not been met.

By taking this dual approach to child support, the UNCRC expects and acknowledges that the realisation of children's rights will be deeply connected and interdependent with the exercise of parental rights and responsibilities (Tobin, 2013), and also the resources available to them. It also recognises the role of Governments in supporting children and ensuring they have their needs met. In order to comply with Article 27(3) in accordance with Article 27(1), the Government must provide social assistance and benefit levels must be set at a suitable standard to provide an adequate standard of living (Harris, 2000). This is not currently happening due to various cuts made to the benefit system (see s2 and 3.2 above). Article 27(4) also requires

that State parties take measures to ensure the recovery of maintenance *for the child*, from the people who have financial responsibility for the child (emphasis added). This suggests that the child has a right to receive child support and it recognises that the State also has a responsibility in ensuring the enforcement of orders or agreements.

There are a number of elements to Article 27. It is clear that the State has a duty to support parents, so that these parents can support their child. There is not a direct duty on the State to support the child (Redmond, 2008). However, the State must take measures to ensure the recovery of maintenance for the child, suggesting that the duties in relation to enforcement of child support are directed at the child rather than the parent. The child support then is directly for individual children, but any additional Government support is for the parents and family more generally, according to Article 27. This may create a conflict with the best interests of the child, which indicates there should be specific measures taken in regard to children to protect their best interests as well as for families more generally. Nolan argues that children's rights to resources should be independent of the parent child relationship, and the delivery of resources to parents does not remove or nullify the obligation of the State to children (2014). This does not sit well with the State's duty in the context of Article 27, but Article 26 recognises that every child has a right to benefit from social security. This benefit could still pass through parents and caregivers, rather than going directly to children, but the provision recognises that the child has a right to benefits, rather than the provision being only for parents. The State's minimum obligation in relation to child support, which includes the provision of benefits, would also include benefits for the child when Article 27 is read with Articles 3 and 26 (see section 4, below).

In order to comply with Article 27 the government needs to take an integrated approach to assisting parents (ComRC, 2006). This would include steps such as assistance to help parents achieve workable and enforceable child support agreements, adequate social assistance to top-up maintenance payments, and/ or replace payments not made, the provision of properly funded childcare that is available for a sufficient number of hours to allow parents to make an informed choice about whether or not to return to work (Russel, 2008),⁶ ad adequate housing, tax or other benefits. This could include the adoption of employment, tax and welfare measures to encourage both parents' active involvement in child rearing (Hodgkin and Newell, 2007, 236;

⁶ Free child care is currently available for 30 hours a week once children reach the age of three. For children younger than that parents in certain circumstances might get 15 hours free childcare per week. This might not be sufficient to make a return to work a viable choice. See for example the difficulty of using work to minimise the harsh impact of the two child policy (Sefton et al (2019) 16-17).

CRC, 2016a). Families need to have the ability and the freedom to make informed decisions to improve their life (Sen, 2000) so they can lead a life they value (Redmond, 2008). The Government is required to take measures under Article 27 to allow families to do this. The socio-economic right provided for in Article 27 uses the language of responsibilities, but extends the duty beyond family responsibilities by placing primary responsibility with the parents and recognising that the State also has a responsibility. This includes a financial responsibility where the parent can only pay a small amount, a responsibility to ensure maintenance agreements are in place and upheld, and a responsibility to provide additional welfare measures to ensure both parents can provide for their child and participate in their child's life.

3.3.2 Failures of the current policy in relation to Article 27

The current framework under the Child Support Act does not satisfy the requirements of Article 27. The emphasis under the CSA is that the responsibility lies with the parents, rather than a dual responsibility between parents and the government. In addition to this fundamental issue with the framework, there are several problems with the current policy from a socio-economic rights point of view. There is no attempt to identify the needs of the child, there is no link between the child support policy and benefits policy, and there is no provision of guaranteed maintenance. The policy places responsibility solely with the parents, encourages them to reach private agreements and provides limited assistance with enforcement.

The current child support formula, which is found in the Schedule 1 of the CSA and supplemented by the 2012 Regulations,⁷ requires the NRP to provide a percentage of their income to their child (known as a qualifying child).⁸ There are various rates applicable depending on the income of the NRP.⁹ The amount payable to the child is reduced where there

⁷ Child Support Maintenance Regulations 2012 (SI 2012/2677).

⁸ See s55 and s26 of the CSA for further information.

⁹ For the basic rate, which applies to NRPs who earn between £200 - £800 per week, this is 12% for one child, 16% for two children and 19% for three or more children. Where the parent earns more than this the rates to be paid on income between £800-£3000 per week are 9% for one child, 12% for two and 15% for three or more. Income is capped at £3000 for the purposes of the CSA. Where the NRP has a high income, top-up child support can be sought from the courts through Schedule 1 of the Children Act 1989. The rate is calculated differently per additional children, because it was felt that the costs per child do not necessarily double. This only works where all the qualifying children live in the same household. Where the NRP earns less than £100 per week they pay a flat rate of £7 regardless of the number of children. Where income is between £100-£200 per week they pay the flat rate of £7 and 19% on the income above £100. On this basis if a NRP earns £180, they pay 19% of £80 which is £15.20. You then add the remaining £7, and the total amount owed is £22.20 per week.

are other relevant children,¹⁰ another qualifying child who lives in a different household, and in accordance with overnight stays.¹¹ It is clear that the focus of the formula is on the circumstances of the NRP, and is therefore based purely on the concept of the duty to maintain, rather than the needs of the child. By way of an example we can consider Steve a parent who earns £300 per week. Steve has one daughter Jane who lives with his ex-partner. Steve must pay 12% of his weekly income to Jane under the CSA in order to comply with the duty to maintain.¹² He must therefore pay £36 per week, which equates to £1872 per year. We can contrast this with Ben who also earns £300 per week, but has two qualifying children. However, his children (George (8) and Pippa (1)) live in different households. Ben must pay 16% of his weekly income in child support,¹³ and this is split equally between his two children.¹⁴ This means he must pay each child £24 per week, which is £1248 per year. There is a considerable difference between the money Jane receives and the money George and Pippa receive. This may not be problematic, but this depends on the living standards of each of the parties. George's mother has remarried, she works part-time earning £350 per week and her new husband earns £850 per week. Arguably George's needs can be catered for and the additional £24 per week from Ben may not make much difference to his daily life. On the other hand, Pippa's mother is a single parent and is heavily reliant on benefits. She is unable to work because she will not be able to cover the cost of childcare, and she does not have family members close by who can help her with this. Pippa has a greater need for the additional money from Ben, and she would receive an additional £12 per week if her father did not have another child who lived in a different household. This demonstrates how the formula focusses on the duty to maintain and does not take into account other issues such as the needs of individual children and poverty.

The other problem with the CSA, and the use of private ordering to reduce Government involvement, is that there is often no child support agreement in place or no enforcement of an agreement. When this is the case, child support is ineffective and cannot lift children out of poverty. This is very different to the position in Australia and the USA where most people have some form of agency agreement, but may opt to use private enforcement (Wikeley, 2006). In the UK if you want to use the agency you need to pay a £20 fee for a maintenance calculation,

¹⁰ A relevant child is a child who lives with the NRP. Where there are relevant children the formula deducts 11% for one child, 14% for two children and 16% for three or more children from the NRPs income before the formula above is applied.

¹¹ See Reg 46 and Sch 1, para 7 for further details.

¹² Child Maintenance and other Payments Act 2008, sch 4, para 3.

¹³ Ibid.

¹⁴ This is known as apportionment.

although domestic violence victims are exempt from this fee.¹⁵ This fee is designed to make people think twice about using the statutory scheme (HC Deb, 2014). Essentially the UK policy focusses on removing legal and public services, reducing oversight, and leaving child support to purely private agreements. This then permits individuals to decide not to have an agreement, or fail to fulfil the terms of the agreement, because the law has become irrelevant. This is unfortunate because the law is an important symbol of legitimacy, which can change attitudes and behaviours (Freeman 2007; 1974). In 2012, 43% of single parents on benefit had no maintenance agreement, and 58% of these parents did not want an agreement (Bryson et al, 2013, 10). In many cases parents have private maintenance agreements outside the formal maintenance system. In the majority of cases people are expected to use “direct pay” to enforce these agreements, which means they organise the enforcement of child support privately.¹⁶ The Government Service¹⁷ which is responsible for child support does not track whether there is a child support agreement in place nor whether maintenance is paid where the agreement is private. This is regarded as a private matter for the family, and as such there is no compliance data on “direct pay” arrangements even though they account for two thirds of maintenance arrangements (Gingerbread, 2019). When the DWP carried out an evaluation of “direct pay” around half of the respondents with these arrangements reported their arrangements had either never started or had broken down (DWP, 2016). Generally the Government Service responsible is only notified of a non-payment if the person with care makes a complaint and informs them that the maintenance has not been paid. The Service might then just chase up that payment but leave the arrangement to be enforced under the “direct pay” system.

The calculation is only moved to “collect and pay” at the discretion of the Government Service. Under s 4(2A) of the CSA the move to “collect and pay” will be granted either where both parties have agreed to this, or where the Service is satisfied that without these arrangements the maintenance is unlikely to be paid. The criteria for meeting this second requirement remain unclear (Gingerbread, 2019). “Collect and pay” is subject to fees, which impact more heavily on the NRP, therefore that parent is unlikely to agree to the transfer. This creates a barrier to enforcement where parents are not transferred to “collect and pay” when they need assistance with enforcement. If parents agree to assistance from the Service, then the NRP must pay an extra 20% on top of the maintenance calculation, and there is also a 4% reduction in the child

¹⁵ Child Support Fees Regulations 2014 (SI 2014/612) Reg 4.

¹⁶ <https://www.gov.uk/manage-child-maintenance-case/how-to-pay> accessed 18 November 2019.

¹⁷ The Government Service has had a number of names and functions. Firstly as the Child Support Agency, then CMEC (see Wikeley, 2006, for further information). It is now housed in the Department for Work and Pensions.

support received. If maintenance is assessed at £100 per week, the paying parent will then have to pay £120 and the parent with care will receive £96, rather than £100 (so the cost for the assistance is £24 and the paying parent has to front most of this). These fees are payable in all cases, including where there is a history of domestic violence. This is problematic given that private arrangements may continue to reinforce underlying power imbalances, and refusal to pay could constitute ongoing control behaviour following relationship breakdown (see for example Stark 2008, 2012; Crossman et al 2016). Charges for this limited assistance are unhelpful when relatively small amounts of money may be changing hands, and lower income earners already struggle to make regular payments (see for example Takeysu and Eldred, 2014; Andrews et al, 2011; Bryson, et al 2013). The reduction in child support available for the child also reduces the ability of child support to lift families out of poverty.

Fees for utilising the service had been envisaged since the conception of the CSA (Wikeley, 2006). The intention was that parents who could afford to pay should pay an appropriate fee. However, this was scrapped because the Agency's horrendous performance made it impossible to justify these fees (Wikeley, 2006, 441-2). The Labour Government did not reintroduce the fees because the Agency was still not performing to an acceptable standard (DSS, 1999). Therefore, the introduction of fees in 2014 might indicate that the Government Service is performing well and orders are now enforced. Unfortunately, however, use of "collect and pay" does not automatically mean the order will be enforced, despite the charges for the use of the service (although the charge would only apply in regard to maintenance that was actually collected). In most cases the Government does not have a direct interest in whether or not the maintenance is actually recovered, and unfortunately they have exclusive power to take enforcement proceedings (Wikeley, 2006, 448; *R Kehoe v Secretary of State for Work and Pensions* [2005] UKHL 48 (*Kehoe*)). If guaranteed maintenance (see section 4 below) was a subsidiary requirement, when the order was not enforced, then there would be a direct interest to secure payment from the NRP. Data from 2017 shows that only 59% of parents on "collect and pay" were contributing to their maintenance liability (DWP, 2017, 8). The Government discharged some of its obligations under Article 27(4) in the cases where the maintenance orders were enforced, particularly where the Service utilised the variety of enforcement measures available to secure this enforcement.¹⁸ However, these 59% of parents are only

¹⁸ The Government Service has a number of enforcement mechanisms at its disposal. There are some which the service can proceed with automatically, such as deductions from earnings (s31), deductions from bank accounts (s32A and B), deductions from benefits (s43) and deductions from a deceased's estate (s43A). Other mechanisms, such as the instruction of bailiffs (s35) require a liability order, and the most obstructive measures

contributing to their maintenance liability. This does not mean that the obligations have been discharged in full and the amount paid may only be a small percentage of the overall maintenance liability. These failings highlight that where the NRP is not paying their full maintenance liability and/or that liability is not sufficient to provide the child with an adequate standard of living then the Government is not fulfilling its responsibility under Article 27 UNCRC.

The DWP also found that there are particular problems with private agreements and private enforcement in cases where there is domestic violence, or in situations where there is no contact between the child and the NRP (2016 (see for example Takeysu and Eldred, 2014, 155; Andrews et al, 2011; Wikeley, 2006, 485). It is extremely difficult to set up working maintenance arrangements where the parties do not speak to each other and sometimes have no way of contacting each other. The focus on individual responsibility does not consider underlying problems like poverty and domestic violence and how interrelated issues, such as stress and other psychological illnesses stemming from financial problems (Ghate and Hazel 2002), may prevent somebody from paying child support or being able to go to work (Russel et al 2008). Russel et al have found that parents who consider they cannot provide options, activities and opportunities for their children feel guilty (2008; Sefton et al 2019). This is because poverty and its correlates can ‘sap parental energy, undermine parental sense of competence, and reduce parental sense of control’ (Edin and Lein, 1997). This indicates that certain groups will be more affected by the policy than others, and those living in poverty will be hit doubly hard as they will not receive the child support which may otherwise lift them out of poverty.

Article 27 requires that the State steps in to ensure that the child has adequate resources, where the parents are unable to do this, or provide assistance to help parents support their children. The Government does not currently provide additional resources where parents cannot or do not pay and has consistently reduced social welfare payments over the last few years. It also scrapped poverty measures against the advice of those who responded to the Government consultation (Stewart and Roberts, 2019). If there is no assessment of the needs of the child, and no measurement of poverty, then it is very difficult to determine when the Government needs to step in to provide additional financial relief for the child and fulfil its obligations under

such as license withholding and imprisonment should only be used as a matter of last resort (see below at s3.4). The enforcement mechanisms are each subject to their own fees. For further information on enforcement mechanisms see for example Wikeley (2006) and Walker (2018).

Article 27. By pushing responsibility into the hands of the parents, the Government is not complying with its minimum obligations in Article 27 UNCRC.

3.3.3 Maximum available resources

Enabling children's socio-economic rights is largely dependent on the well-being and resources available to their parents, or others responsible for their care (ComRC, 2006 [20]). This is because children have needs and rights which are linked to the family structure as a whole, and beyond that to wider social structures and interconnections between social contexts within the wider ecosystem (Bronfenbrenner, 1979). This indicates that poverty is relative and is linked to wealth in British society overall. Unfortunately the UK has one of the lowest unemployment benefit rates (Deeming and Smyth, 2015 and see section 2 above), which indicates that the level of poverty in certain sectors of society is not relative to the living standards of society as a whole.

International human rights treaties, such as the UNCRC and the International Covenant on Economic, Social and Cultural Rights (ICESCR), require that States allocate maximum available resources to protect socio-economic rights, which includes fulfilling their obligations under Articles 27 and 26. The concept of maximum available resources should not be interpreted narrowly (Vandenhoe, 2014; ComRC, 2003), and should reflect the wealth of the country. During times of austerity cuts may be required, but there needs to be limits to any cuts so that policy changes resulting in cuts are temporary, and any cuts must be necessary and proportionate (Vandenhoe, 2014; CESCR, 2012). Retrogressive measures are subject to heightened scrutiny by human rights organisations (Landau, 2012), and where such measures are taken children, particularly those in vulnerable situations, should be the last to be affected (ComRC 2003; 2016a). Unfortunately the cuts made by the Conservative Government fall disproportionately on the poor and those who are least able to bear it (O'Connell, 2013; Alston, 2018). Such drastic cuts which hit the poorest sector of the population should not be necessary in the British economy. Government budgets sometimes support deliberate Government priorities, such as austerity and independence, rather than being more generally designed to ensure they prioritise the needs and rights of human beings (Collins, 2019; Elson, 2012; O'Connell, 2013). In order to protect human rights Governments need to find a method to deal with austerity which does not simply cut services for those who need them the most. The austerity measures in the UK go beyond what is necessary and relative to the overall wealth of society (Alston, 2018). The Committee on the Rights of the Child has reported that the UK is

failing to undertake its responsibility to implement welfare and other social measures to prevent child poverty and implement children's rights (ComRC, 2016b).

The heart of the implementation of children's socio-economic rights lies in the provision of sufficient human, technical and financial resources, which contribute to the general measures consistently reinforced by the UNCRC (McCall-Smith, 2019). The provision of these human and financial resources are necessary if the Government is going to fulfil its human rights obligations in relation to child support. In order to provide for these needs the Government must provide for adequate public social provision, which would include access to housing and other vital resources and the provision of shared public goods (Galbraith, 2018). Galbraith argues that we can never rely purely on private provision because of changes such as loss of work, so adequate public provision must always be available (2018).

3.4 The interpretation of Articles 3 and 27 UNCRC by the UK courts

There are three ways in which the judiciary can utilise the UNCRC in their decisions. Firstly, it can be used to interpret legislation, when the meaning of the UK legislation is in doubt. Secondly it may guide the development of the common law. Thirdly, and most importantly, it may be relevant where the court is applying the European Convention on Human Rights (ECHR) via the Human Rights Act 1998 (*SG* [2015], per Lord Hughes [137]; Gilmore (2017)). More controversially Lord Kerr argues that the UNCRC should be directly applicable in court on the basis of legitimate expectations (*SG* [243]-[257]). He considers that there should be an exception to the dualist theory in human rights cases and refers to earlier case law that relies on legitimate expectations. The main premise of his argument is that the dualist theory is designed to protect citizens from abuses by the executive (*SG* [255]). Therefore, if this is the case the best way of protecting citizens against human rights abuses is to allow them to directly enforce their rights in court. There is merit to this argument, and this fourth strand could increase the protection of children and allow greater oversight of the executive in children's rights cases if it could gain wider acceptance from the judiciary.

Of the three accepted stands, the best weapon in case law relating to children's socio-economic rights is where the court is applying the ECHR (see for example *SG*; *DA and DS*; *Smith (FC) v Secretary of State for Work Pensions and Another* [2006] UKHL 35 [77] (*Smith*); *Kehoe*). Therefore, the link between Articles 3 and 27 of the UNCRC and the broadly phrased and interpreted Article 8 of the ECHR (right to private and family life) is essential if children's

socio-economic rights are to be developed and protected by the UK courts. As Lord Kerr explains in *DA and DS*, ‘the values underlying the right of all appellants to respect for their family life include those of a home life underpinned by a degree of stability, practical as well as emotional, and thus by financial resources adequate to meet basic needs, in particular for accommodation, warmth, food and clothing’ (2019 [35]). This phrase strikes at the heart of children’s socio-economic rights, and hints at child well-being more broadly. Although it is disappointing the UNCRC is not directly applicable, this demonstrates that children’s socio-economic rights can for these purposes be protected through Article 8 ECHR, which can be interpreted in light of the UNCRC.

A key case which considered child support and human rights is *Kehoe*. The case looked at the issue of access to court in relation to the enforcement of child maintenance, and it turned on Article 6 rather than Article 8 ECHR. The case does not frame child support as a right. However, *Kehoe* does not prevent the framing of child support as a right. The problem with *Kehoe* is the case is not wide enough to give us an answer to this question, so the decision should not be used to suggest that there is not a right to child support. In her dissenting judgment in *Kehoe* Lady Hale takes a broader view of child support and indicates that you can only answer the question properly if this perspective is taken. The majority focussed on the issues raised by Mrs Kehoe, which were too narrow, and the problem therefore is the question posed rather than the judgment itself rejecting child support as a question of socio-economic rights. This point is made more clearly by the European Court of Human Rights (ECtHR) which specifically emphasises that it is not ruling on whether there is a civil right to maintenance but purely whether there has been a breach of Article 6, in the sense that Mrs Kehoe did not have access to a court or a tribunal (*Kehoe v United Kingdom* App. No. 2010/06 [2008] FLR 1014). The ECtHR considered that because Mrs Kehoe did have access to court via judicial review there was no violation of Article 6. Under Article 27(4) State parties have to take measures to ensure the recovery of maintenance *for the child*, but there is no specific requirement on how they should do this. What is clear is that the measures need to be effective in order for the obligation to be discharged. The Government Service does have a number of enforcement measures available to them, however, it is questionable whether these measures are effective because the Service is not keen to step up and assist parents with enforcement, and the fees act as a barrier to those who could benefit from the service (see s3.3.2 above). The decision in *Kehoe* does not help with this concern. The system might be more effective if the Government had a direct interest in recovering maintenance for the child.

A year later in *Smith*, the court specifically refers to Article 27 UNCRC. Lady Hale, who forms part of the majority, takes a children's rights approach in a case where two interpretations of the law were possible [77]-[78]. The case concerned the interpretation of the phrase "total taxable profits...as submitted to the Inland Revenue, when determining the earnings of a self-employed parent." The issue was whether capital allowances, allowed as deductions for tax purposes, could also be deductions for the purpose of a child support calculation.¹⁹ The majority held that capital deductions should not be made when calculating child support, deploying the interpretation which best complies with the best interests of the child.

The UNCRC was also referred to by the Court of Appeal in other cases such as *Karoonian v CMEC*; *Gibbons v CMEC* [2012] EWCA Civ 1379 (Gilmore, 2017). These joined cases concerned liability proceedings in respect of fathers who had not paid the child support they were required to pay. The fathers argued that the committal proceedings did not respect their right to a free trial under Article 6 ECHR. The Court of Appeal referred to Lady Hale in *Smith* and commented that enforcement by commitment to prison achieves a reasonable relationship between the aim of achieving enforcement (as required by the UNCRC) and the means employed to do this (*Karoonian* [12]). However, in these cases the Court found in favour of the fathers. Even though the threat of imprisonment, by way of a suspended sentence, is a legitimate enforcement mechanism it should only be used as a method of last resort where there was evidence that the NRP had wilfully refused or culpably neglected to pay. In these cases CMEC had not provided suitable evidence in this regard, therefore the Court held reluctantly that the commitment should be set aside ([48]-[49]). These later cases help to show that *Kehoe* has not automatically ruled out a right to child support for all purposes, instead the judiciary has looked to the best interests of the child when interpreting the CSA 1991.

4. Child support and the need for interaction with social security

The Government must take steps to assist parents to pay child support. It also has a duty to support parents in meeting their child's needs where the parents financially cannot, or can only provide a small amount towards those needs (see section 3.3.1 above). Therefore, in order for the Government to fulfil its obligations under Article 27 it needs to consider the interaction

¹⁹ In this particular case the deduction of capital allowances would make a substantial difference when assessing the child support liability. 'If he was entitled to a deduction for capital allowances, his earnings for the 2000–2001 tax year, for child support purposes, were £20,892. If he was not entitled to the deduction, his earnings were £169,520' (*Smith* [53]).

between child support and social security under Article 26 of the UNCRC. Article 26 requires that every child has a right to social security in accordance with the resources and circumstances of the child, and those having responsibility for them. Therefore, all children have their own entitlement to social security, but children who only live with one of their parents have a right to child support over and above any benefits they are entitled to.

One positive element of the current child support framework, which should be retained under the new framework, is that most of the money recovered is paid directly to the parents rather than to the public purse (Miles, 2011, 101). This is positive in the sense that when the NRP does pay child support the parent with care gets to retain this money on top of any benefits which can help alleviate poverty (Cuesta and Meyer, 2014; Skinner et al 2012; Hakovirta 2012; Cuesta et al 2018). This is necessary as the limited benefits available are insufficient to support lone parents and their children, because they have a higher risk of poverty than the wider population (see sections 2 and 3 above). However, the current system does not go far enough because it works on the assumption that child support is paid, when often it is not (section 3.3.2 above). Where there is no maintenance agreement, or an agreement is in place but not enforced, then there is no guaranteed child maintenance in the UK as an alternative provision for the child. The person with care and therefore the child do not receive the money they are otherwise entitled to.

Some other countries have guaranteed schemes of child maintenance, so that the parent receives state payments to compensate for lack of payment by the NRP, or supplement the amount the parent is able to pay (Hakovirta and Hiilamo, 2012). This means that the parent is guaranteed to receive a basic allowance to provide for the child. However, this money is not always treated as income specifically for the child, because sometimes deductions are made from the other social benefits that the parent is already entitled to. Therefore, where these schemes do not result in any extra income they do not improve family well-being, which is necessary for the protection of the child's socio-economic rights. The positive effects of a guaranteed maintenance scheme are completely negated if this income is regarded when the State considers access to other benefits (Hakovirta et al, 2019; Skinner et al, 2017), because limited or no additional money may be provided. In countries where child support is treated as a complete substitute for social assistance, such as Germany and Finland, child support has no impact on the reduction of poverty (Hakovirta et al, 2019) because the parent does not receive any additional money to assist with their socio-economic progress. Although in some situations the benefits adults are entitled to might be sufficient money for that adult, they will not

necessarily provide enough money where that adult is also responsible for a child. Research clearly demonstrates that lone parents are particularly susceptible to poverty (see section 3.2 above), highlighting that additional money is required to lift these families out of poverty. Replacing adult benefit with guaranteed child maintenance does not assist with the protection of the child's socio-economic rights, because children should be entitled to resources that are independent of the resources allocated to their caregivers (Nolan, 2014, 9-10). Therefore, to best give effect to the child's socio-economic rights the receipt of child support should not be regarded when considering an adult's entitlement to benefits. Instead, recovered child support should be seen as a specific allowance for the child themselves to assist that child with socio-economic progress and enhance their well-being and development, on the basis of need to provide adequate resources. If, for example, the basic need of children is assessed at £100 per week and the parents can only provide £50 per week, then there is a shortfall of £50. Therefore the child is entitled to the additional £50 under Article 26, which is assessed on the basis of the needs and resources of the child taking account of the circumstances of those having responsibility for the child. This would also mean that the Government is fulfilling its responsibility to provide assistance under Article 27. This should apply in all cases where there is a shortfall in the child support calculation, or when the child support arrangement is not enforced. (Where the arrangement is simply not enforced, the Government can claim the money back from the NRP. This means they will have a direct interest in enforcing the arrangement because otherwise they will have to provide guaranteed maintenance (to the value of the needs of the child) in cases where the parents should be able to provide for the needs of the child). This guaranteed amount is based on the needs of the child and should not have an impact on any other resources available to parents.

This article has shown that child support is often not received, there is a lack of wider support around family wellbeing and enforcement, and the social security system is not fit for purpose. Therefore, the Government is not complying with its children's socio-economic rights obligations because it is failing to ensure the appropriate provision of child support, which is supplemented by adequate benefits. Instead the Government has pushed child support into the private sphere, isolated it from benefits and absolved its own obligations. The Government has the ultimate responsibility to ensure children are adequately supported under Article 27. To do this it must assist parents to enable them to achieve working child support arrangements where possible and make a connection between child support and social security in order to protect children's socio-economic rights.

5. The requirements of a new framework based on children's socio-economic rights

This article has demonstrated that the current child support policy is not a suitable method for providing children with adequate resources and has shown why a socio-economic rights approach to child support would be more suitable. This section will now suggest a new framework which complies with the Government's children's socio-economic rights obligations. The new framework must attempt to identify the needs of the child, reintroduce child poverty measures and include a link between child support and social security. The new framework must avoid placing responsibility solely with the parents, and instead recognise a dual responsibility between parents and Governments by removing the pressure on private agreements and removing charges for assistance with enforcement.

Under the CSA there is no attempt to identify the needs of the child, nor the income of the caring parent. The formula only considers the income of the paying parent, any other dependents they might have and number of overnight stays (see section 3.3.2). This is a failure from a socio-economic rights perspective because the policy and law do not attempt to promote the well-being or the needs of the child and the caring parent. It simply provides that the parents are responsible for the child, therefore the NRP must pay a portion of income towards that child. This then provides an amount which the paying parent is expected to and considered able to pay. This amount could be so low it makes relatively little difference to the caring parent, and if the paying parent has irregular work or a zero hour contract, it may be difficult for them to maintain regular payments (Takeysu and Eldred, 2014). Therefore, this formula is not fulfilling any wider social aims apart from the idea that parents are responsible for their children, under the principle of the "duty to maintain". This is a relevant concept which is apparent in the children's rights approach (Article 27), but there needs to be a more nuanced obligation which takes account of the needs of the child if children's rights are to be fulfilled in this context.

Initially the formula under the CSA tried to identify the needs of the child. Unfortunately these complicated formulas failed because the initial CSA tried to do too much at the same time, it tried to run before it could walk (King and Crewe, 2014). Other countries started with a simple formula, which got more complicated over time (Saue, 2014). In countries such as Australia, Finland and Denmark the formulas make an attempt to determine the needs of the child (Skinner, 2007). Sometimes, in countries like Norway, this also looks specifically at the age of

the child in relation to their potential needs (Skinner 2007, Saue et al 2014). Each system has its own variations and it may be difficult to come up with a perfect system, given that an assessment based on economic welfare alone will not necessarily prevent poverty (Waggle 2002; Redmond 2008; Sen 2000). However, some attempt to identify the needs of the child in child support policy is necessary if the Government is going to comply with its children's socio-economic rights obligations to ensure the child has adequate resources. For Pippa, who received £24 a week from Ben, there is an immediate shortfall if needs are assessed at £100 per week. Here the Government would step in and pay £76 per week to reduce the shortfall, on the basis of needs. However, it may also be necessary to identify the income of the person with care which is done, for example, in Norway and New Zealand (Saue 2014; Skinner et al 2017). If the person with care is a lone parent then they may need additional assistance due to potential structural discrimination arising from this status, and the increased likelihood they will be living in poverty (see s 3.2 above). In the example above, George (Pippa's half-sibling) had additional resources, because he lived in a dual-parent household where both parents worked. If the formula also considers the income of all carers then a higher portion of Ben's income may go to Pippa over George. This is another way of reducing the Government's liability whilst still providing adequate resources for children in line with Article 27. Therefore, including an assessment of the child's needs, and the income of all carers in the formula, will assist in determining how much additional financial support from the Government is required in order to cater for the child's socio-economic rights (see s 4 above). This should be supplemented by reinstating poverty measures, to determine whether children's needs are appropriately measured and adequately accounted for through the child support and the welfare system. The Government must make up any shortfall, as required under Article 27(3), to ensure the child has access to adequate resources that fulfil their needs.

Pushing child support into the private sphere is the other way the Government is failing in its children's socio-economic rights responsibilities. Instead the Government must provide full support in cases where parents cannot make private agreements, such as those involving domestic violence or where the relationship between them has completely broken down. The Government needs to provide suitable avenues for securing child support enforcement which are easier to access, do not cost money, and therefore do not penalise children and parents. The Government needs to commit to providing maximum available resources to assist parents and children in need, which should be in line with the wealth of the nation. Where the Government secures enforcement, from those who are able to pay, by appropriately supporting parents, it

will reduce its liability to provide guaranteed maintenance where the parents can cover the financial needs of the child themselves. All services need to be available to any parent who wants to access them. Parents who do not need the assistance are unlikely to request assistance from the services available in any event (see Felbberg 2013).

6. Conclusion

This article has demonstrated that the current Child Support framework is not fit for purpose because it does not comply with children's rights as it fails to ensure children have access to adequate resources. The CSA is instead based on the duty to maintain through individual responsibility, without any consideration of the needs or rights of children. The Act also fails to consider what the Government responsibility might be where the parent is unable to pay a sufficient amount of child support. Child support is often not received, there is a lack of wider support around family wellbeing and enforcement, and the social security system is arguably not fit for purpose. By taking this limited approach to child support the Government has failed to fulfil its responsibilities in relation to children's socio-economic rights, because it is failing to ensure the appropriate provision of child support, which is supplemented by adequate benefits. The UNCRC takes a dual approach to child support, placing responsibility with parents and the Government to ensure the child grows up with adequate resources. In order to fulfil this requirement the Government must allocate maximum available resources in line with the wealth of the nation. This article has considered the requirements in Article 27, as well as Articles 3, 4 and 26, UNCRC to demonstrate that the framework does not meet the requirements that the State promised to fulfil when it ratified the UNCRC.

The protection of socio-economic rights is necessarily related to family well-being and the reduction of poverty. Child support provides children and their carers with subsistence, which will reduce poverty if paid regularly. Governments need to ensure appropriate mechanisms are in place to recover child support for children. In cases where the parent is unable to pay, or the amount they can pay is insufficient to meet the needs of the child, the Government should provide money to reduce poverty. The Government and relevant bodies must support families, as appropriate, in order to ensure that children's needs are met. The Government needs to think about socio-economic factors and larger social justice issues when addressing child wellbeing, and child support, and recognise that parent's may need some assistance in order to resolve certain problems that relate to their family (Hearn, 2011). The complex structural conditions

of poverty need to be addressed by the State. Therefore a law and policy on child support which complies with children's socio-economic rights is the best way to address this issue as it recognises the responsibility of multiple people and the need for multiple factors to be addressed. It also recognises the need for support for families and the necessity to move away from parental blaming. The Government has not done this and therefore the current child support policy does not work because child support continues to go unpaid, and the policy does not fulfil international obligations to secure socio-economic rights for children.

The article identifies a new framework which complies with socio-economic rights, focuses on children's needs and considers how the child support system can interact with the benefits system in order to adequately cater for a child's needs and support child well-being. The Government must assist parents to enable them to achieve working child support arrangements where possible, and make a connection between child support and social security in order to protect children's socio-economic rights. These changes should improve overall family wellbeing and help lift children of lone parents out of poverty. This new framework needs to include the reinstatement of poverty targets to help determine need. This approach means the Government can utilise the child support system to protect children's socio-economic rights and shield children from the detrimental effects of poverty. This would secure better long-term outcomes for children, which would give them a better chance of being independent in adulthood.

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